DEPARTMENT OF STATE
WASHINGTON

FOREIGN SERVICE
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UNCLASSIFIED

AIR MAIL URGENT

SUBJECT: Effect of Immigration and Nationality Act of 1952 Respecting American Nationality

1. Purpose

1.1 This serial makes a comparison between the provisions of the Nationality Act of 1940, as amended, and the Immigration and Nationality Act of 1952 which becomes effective at 12:01 United States Eastern Standard Time on December 24, 1952. This comparison deals only with important changes effected by the Immigration and Nationality Act of 1952 and does not profess to be an exhaustive comparison of all changes. The discussion of these changes follows the numerical order of sections of the Immigration and Nationality Act of 1952. Copies of the latter act have been furnished to all posts for their information.

1.2 This serial also advises diplomatic and consular officers that, so far as practicable, inquiry concerning the provisions of the new law should be made only in connection with cases which would require the determination of the applicability of any provision to a case officially presented to and pending before them.

2. Birth Abroad, of Parents, One of Whom is a Citizen And The Other an Alien

2.1 Section 301 (a)(7) changes section 201(g) of the Nationality Act of 1940 by using the words "physically present" instead of the word "residence". This change in language will make it possible to determine more readily whether the American parent has sufficient residenee in the United States or its outlying possessions to confer nationality upon the child. It will be noted that at least 5 of the 10 years of physical presence in the United States must be after attaining the age of 14 years. Section 201(g) provides that the American parent must have had at least 5 years of residence after attaining the age of 16 years. Moreover, the new law expressly provides that any periods of honorable service in the Armed Forces of the United States by the citizen parent may be included in computing the physical presence requirements of paragraph (7).

2.2 Under section 301(b) any person who is a national and citizen of the United States under paragraph (7) cited above loses his nationality and citizenship unless he comes to the United States between the ages of 14 and 23 and immediately following any such coming is continuously physically present in the United States for at least 5 years. It will be noted under subsection (b) that substantial changes are made from the provisions of section 201(g) of the Nationality Act of 1940 concerning retention of citizenship. Under the provisions of section 201(g), it is necessary that the child reside in the United States or its outlying possessions for a period or periods totaling 5 years between the ages of 13 and 21 years, and if the child has not taken up such residence by the time he reaches the age of 16 years or if he has resided abroad for such time that it becomes impossible for him to complete the 5 years' residence before he reaches the age of 21 years, his American citizenship thereupon ceases. It will be noted that subsection (b) uses the definite expression "continuously physically present" and that it raises the age to 23 years for coming to the United States before nationality and citizenship can be lost.

2.3 Under sections 301(c) and 405(c), the provisions of section 301(b) must be considered applicable to all children of the category under discussion born after May 24, 1934, except those who have ceased to be citizens under section 201(g) and (h) of the Nationality Act of 1940. Section 301(c) also extends to such children who have partially fulfilled the provisions of section 201(g) concerning retention of citizenship before attaining the age of 16 years and before December 24, 1952, the privilege of retaining citizenship either by complying with the residence requirements of section 201(g) of the Nationality Act of 1940 or by complying with the residence requirements of section 301(b).

3. Children Born Out of Wedlock

3.1 Section 309(a) states that the provisions of paragraphs (3), (4), (5), and (7) of section 301(a) and of paragraph (2) of section 308 of the Immigration and Nationality Act shall apply as of the date of birth to a child born out of wedlock on or after December 24, 1952, if the paternity of such child is established by legitimation while the child is under the age of 21 years. Paragraphs (3), (4), (5), and (7), of section 301(a) have reference to a person born outside the United States of an American parent or parents, and paragraph (2) of section 308 has reference to a person born outside the United States and its outlying possessions of parents both of whom are nationals but not citizens of the United States. Section 205 of the Nationality Act of 1940, which is comparable to section 309 of the Immigration and Nationality Act, states that the provisions of section 201, subsections (c), (d), (e), and (g) and section 204, subsections (a) and (b) apply, as of the date of birth, to a child born out of wedlock provided the paternity is established during minority by legitimation or adjudication of a competent court. Subsections (c), (d), (e), and (g) of section 201 and subsections (a) and (b) of section 204 correspond roughly to the paragraphs of section 301(a) and section 308 referred to in section 309(a) of the Immigration and Nationality Act. It is very important to observe, however, that section 309(a) does not provide for the acquisition of American nationality in such cases if the paternity of the child is established by adjudication of a competent court. Therefore, it will be necessary on and after December 24, 1952, that the paternity of such a child must be established by legitimation only in order that he may acquire the status of a national or citizen of the United States.

3.2 Section 309(b) of the Immigration and Nationality Act states that, except as otherwise provided in section 405, the provisions of section 301(a) (7) shall apply to a child born out of wedlock on or after January 13, 1941, and prior to December 24, 1952, as of the date of birth, if the paternity of such child is established by legitimation before or after the date last given and while such child is under the age of 21 years. The provisions of sections 301(a)(7), 301(b) and 301(c) are discussed in section 2 of this circular under the heading of "Birth Abroad of Parents, One of Whom is a Citizen and the Other an Alien". It is very important to note that under the provisions of subsection (b) of section 309 a child born on or after January 13, 1941, and prior to December 24, 1952, can acquire the status of a national and citizen of the United States under the provisions of section 301(a)(7) only if the paternity of such child is established by legitimation, but that a child cannot acquire the status of a national and citizen of the United States under section 301(a)(7) if the paternity of the child is established by adjudication of a competent court. Under the provisions of section 405(c), nationality acquired before December 24, 1952, under section 201 and section 205 of the Nationality Act of 1940, is not terminated by the repeal of that act.

3.3 Section 309(c) of the Immigration and Nationality Act covering the status of a person born on or after December 24, 1952 outside the United States and out of wedlock of an American mother is comparable to the second paragraph of section 205 of the Nationality Act of 1940. Both sections cover the acquisition of United States nationality by a child born abroad of an unmarried American mother in cases in which the paternity of the child has not been established. Under section 205 of the Nationality Act of 1940, the child could claim American nationality if born prior to December 24, 1952, if the mother had the nationality of the United States at the time of the child's birth and had previously resided in the United States or one of its outlying possessions. Under subsection (c) of section 309 of the Immigration and Nationality Act, if the person was born on or after December 24, 1952, he cannot claim American nationality unless the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of 1 year. Under this subsection, a child who acquired American citizenship at birth is not divested of citizenship by subsequent legitimation.

4. Naturalization of Children Through the Naturalization of Parent or Parents

Under sections 320, 321, 322, and 323, provision is made for the naturalization of alien children through the naturalization of their parent or parents. It will be noted that these sections provide that the naturalization of the parent or parents must take place while the child is under the age of 16 years. Under the comparable sections of the Nationality Act of 1940, sections 313, 314, 315, and 316, the naturalization of the parent or parents must take place while the child is under the age of 18 years.

5. Repatriation of American Citizens Who Lost Nationality in Connection With Service in Foreign Armed Forces

5.1 Section 327 of the Immigration and Nationality Act provides for the repatriation of American citizens who lost their nationality in connection with service in the armed forces of a foreign country. It differs from section 323 of the Nationality Act of 1940 in several respects. Section 323 of the Nationality Act of 1940, as amended, provides that a person who, while a citizen of the United States and during World War II entered the military or naval service of any country at war with a country with which the United States was at war and who lost citizenship in connection with such military service, could be naturalized by taking an oath of allegiance to the United States before any American diplomatic or consular officer abroad. The section provides that World War II must be deemed to have commenced on September 1, 1939, and to have continued until such time as the United States ceased to be in a state of war. This country ceased to be in a state of war at 9:30 a.m., Eastern Daylight Saving Time, April 28, 1952, at which time the United States instrument of ratification of the treaty of peace with Japan, last country with which a state of war continued to exist, was deposited by the Secretary of State. In order, therefore, that a person could recover American nationality under section 323 of the Nationality Act of 1940, as amended, he must have lost his American nationality in connection with service in the armed forces of a foreign country designated by that section of law on or after September 1, 1939, and prior to April 28, 1952.

5.2 Section 327(a) of the new law covers World War II, whereas the current law covers both World War I and World War II. Section 327(a) makes provision for the restoration of nationality to citizens of the United States who lost their citizenship in connection with service in the armed forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945. Moreover, section 327(a) provides that such person shall be naturalized before a naturalization court but makes no provision for naturalization by taking an oath of allegiance to the United States before an American diplomatic or consular officer abroad. Subsection (d) of section 327 states that for the purposes of section 327 World War II shall be deemed to have begun on September 1, 1939, and to have

terminated on September 2, 1945. Subsection (e), section 327, states that it shall not apply to any person who, during World War II, served in the armed forces of a country while such country was at war with the United States.

5.3 To summarize, section 327 makes three important changes, effective on and after December 24, 1952, in the provisions of section 323, as amended, of the Nationality Act of 1940:

a It shortens from September 1, 1939-April 27, 1952, to September 1, 1939-September 1, 1945, the period during which a person in the category under discussion must have performed service in order that he may be eligible for naturalization.

b It terminates naturalization through the process of taking an oath of allegiance before a diplomatic or consular officer of the United States abroad.

c It prohibits the naturalization under section 327 of such a person who, at any time during the period beginning September 1, 1939, and ending September 1, 1945, served in the armed forces of a country with which the United States was at war during such period.

6. Loss of Nationality

6.1 Loss of Nationality by Native-Born or Naturalized Citizens

6.11 Section 349(a)(1) of the new law provides, among other things, that, on and after December 24, 1952, a person who is a national of the United States shall lose his nationality by obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person. The section also provides, however, that nationality shall not be lost thereunder by any person as the result of the naturalization of a parent or parents while such person is under the age of 21 years, or as the result of a naturalization obtained on behalf of a person under 21 years of age by a parent, guardian, or duly authorized agent unless such person shall fail to enter the United States to establish a permanent residence prior to his 25th birthday. It will be observed that this provision differs from section 401(a) of the Nationality Act of 1940 in that it raises the age for taking up residence in the United States from 23 years to 25 years. Section 349(a)(1) also provides that a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents may, within 1 year from December 24, 1952, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of section 101(a)(27)(E).

6.12 Paragraph (3) of section 349(a) provides that American nationality will be lost by entering or serving in the armed forces of a foreign state unless such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense, but that the entry into such service by a person prior to the attainment of his 18th birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise the option at the attainment of his 18th birthday. Paragraph (3) differs from section 401(c) of the Nationality Act of 1940, which it replaces, in that it omits the provision that, in order to lose American nationality, it is necessary that the person shall have or acquire the nationality of the foreign state. It also differs from section 401(c) in that it provides that nationality is not lost when permission for the military service is received in writing from the Secretary of State and the Secretary of Defense. The provision regarding the effect of an option for release from military service at age 18 is also new.

6.13 Paragraph (4)(A) and (B) replaces section 401(d) of the Nationality Act of 1940. These provisions concern the loss of nationality by employment in a foreign state. Section 401(d) provides that loss of nationality shall result if the position is open only to nationals of the foreign state. Paragraph (A) provides that nationality is lost if the person has or acquired the nationality of the foreign state, omitting the provision that the position is open only to such nationals. Paragraph (4) (B) provides that American nationality shall be lost by accepting, serving in, or performing the duties of any office, post or employment under the government of a foreign state or a policital subdivision thereof, for which an oath, affirmation, or declaration of allegiance is required. The provisions of paragraph (4) (B) are not contained in section 401(d) of the Nationality Act.

6.14 Paragraph (10), covering residence outside the United States for the purpose of avoiding military service, replaces section 401(j) of the Nationality Act of 1940, as amended, by the act of September 27, 1944. It will be observed that, under paragraph (10), a failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. This provision is not contained in section 401(j).

6.15 Section 349(b) contains a new provision of law of special importance. Thereunder, any person who commits or performs any act specified in subsection (a) shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind, if such person at the time of the act was a national of state in which the act was performed and had been physically present in such state for a period or periods totaling 10 years or more immediately prior to such act.

6.2 Dual Nationals, Divestiture of Nationality

Section 350 regarding the loss of nationality in the cases of dual nationals is new law. It provides that a person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state shall lose his United States nationality by having a continuous residence for 3 years in the foreign state of which he is a national by birth at any time after December 24, 1952, and after attaining the age of 22 years, unless (a) prior to the expiration of the 3-year period,he takes an oath of allegiance to the United States before a United States diplomatic or consular officer in a manner prescribed by the Secretary of State, and unless (b) he shall have his residence outside the United States solely for one of the reasons set forth in paragraphs (1), (2), (4), (5), (6), (7), or (8) of section 353 or paragraphs (1) or (2) of section 354 of the Immigration and Nationality Act. The Department is now implementing section 350(1) of the act by prescribing the manner of taking an oath of allegiance to the United States before a United States diplomatic or consular officer and, in due course, the regulation will be promulgated to the field. Paragraph (2) of section 350 provides that nothing contained in the section shall deprive any person of his United States nationality if his foreign residence shall begin after he shall have attained the age of 60 years and shall have had his residence in the United States for 25 years after having attained the age of 18 years. It will be necessary that the paragraphs above-noted of sections 353 and 354 be very carefully scrutinized in order to determine whether a case comes within the scope thereof, thereby, coupled with the taking of the oath of allegiance to the United States, preventing the person from losing American nationality. In particular, it will be necessary to apply strictly the provisions of paragraph (5) of section 353, regarding residence abroad on account of illness, to insure that the paragraph may not be used as an excuse for avoiding the loss of nationality. It should be particularly noted that section 350 uses the words "sought or claimed benefits of the nationality of any foreign state"; that is, that the section does not refer merely to benefits sought or claimed of the foreign state of which the person is a national.

6.3 Losing Nationality 6 Months After Attaining the Age of 18 Years

Section 351(b) provides that a national who, within 6 months after attaining the age of 18 years, asserts his claim to United States nationality in such manner as the Secretary of State shall by regulation prescribe shall not be deemed to have expatriated himself by the commission, prior to his 18th birthday, of any of the acts specified in paragraphs (2), (4), (5), and (6) of section 349(a). The Department is in process of prescribing a regulation to implement subsection (b) and, when finally issued, it will be promulgated to the field.

6.4 Loss of Nationality by Naturalized Citizens (By Residence in a Foreign State or States)

Section 352(a) of the Immigration and Nationality Act changes section 404 of the Nationality Act of 1940 substantially. Section 352(a) must be interpreted with reference to sections 353 and 354 of the new law. This question of the loss of nationality by naturalized American citizens by residence in a foreign state or states was made the subject of a circular airgram of August 29, 1952, 7:20 p.m., addressed to all American diplomatic and consular officers. It is believed that a reference to the circular airgram will be helpful in showing the changes which have been made by the new law. It is not considered necessary to cover the matter in the present circular.

7. Issue of Certificates of Identity to Persons Who Have Been Denied Rights and Privileges as Nationals of the United States

7.1 Section 360(b) provides for the issue of a certificate of identity to any person not within the United States who has been denied rights or privileges as an American national. The certificate may be applied for to a diplomatic or consular officer of the United States and, if issued, may be used for the purpose of traveling to a port of entry in the United States and applying for admission. Section 360(b) provides that the Secretary of State shall prescribe rules and regulations for the issuance of the certificates of identity. In due course, the appropriate regulations will be issued and promulgated to the field. The subsection states that it shall be applicable only to a person who, at some time prior to his application for the certificate of identity, has been physically present in the United States, or is a person under 16 years of age who was born abroad of a United States citizen parent.

7.2 Section 360(c) provides that a person holding a certificate of identity issued under section 360(b), when applying for admission to the United States at a port of entry, shall be subject to all the provisions of the Immigration and Nationality Act relating to the conduct of proceedings involving aliens seeking admission to the United States. It also provides that a final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings, and not otherwise.

7.3 Section 360 replaces section 503 of the Nationality Act of 1940.

8. Restoration of Citizenship Lost by Voting in Italy

Section 402(j) amends Public Law 114 of the 82nd Congress, 1st Session, which was approved on August 16, 1951. Under Public Law 114, it is provided that a person who, while a citizen of the United States, had lost his citizenship by having voted in political elections in Italy on June 2, 1946, or April 18, 1948, may be naturalized by taking, prior to 2 years from the enactment of the act, the oaths prescribed by section 335 of the Nationality Act of 1940. The provisions of Public Law 114 were made the subject of a circular airgram of August 28, 1951, from the Department to all American diplomatic and consular offices. That circular airgram instruction gives details as to the procedure which should be folllowed in connection with the

repatriation of persons who had lost their American nationality under the provisions of section 401(e) of the Nationality Act of 1940 by voting in either of the two Italian elections mentioned. Section 402(j) changes Public Law 114 by providing for the naturalization of a person who has lost citizenship by having voted in Italy between January 1, 1946, and April 18, 1948, inclusive, not necessarily only in either of the two elections which were mentioned in Public Law 114. Section 402(j) contains provisions similar to those in Public Law 114 as to the taking of an oath to the United States as a means of effecting repatriation. On and after December 24, 1952, the procedure will be legally available. Before that time, the Department will issue instructions to the field as to the proper procedure to be complied with.

9. Savings Clauses

Section 405(c) reads that "except as otherwise specifically provided in this Act, the repeal of any statute by this Act shall not terminate nationality heretofore lawfully acquired nor restore nationality heretofore lost under any law of the United States or any treaty to which the United States may have been a party". Under section 403(a)(42), the Nationality Act of 1940 is repealed. These provisions that nationality acquired before December 24, 1952, shall not be terminated and that nationality lost prior to that date shall not be restored should be specially noted.

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